

AG Contract No : KR 05-0127TRN  
ADOT ECS File No : JPA 04-102  
Project: SR 51 Design Build  
Section: Oak Street & Campbell Avenue  
Pedestrian Bridge Sites  
TRACS No.: H6100 01C  
Budget Source Item No.: 24803

INTERGOVERNMENTAL AGREEMENT

LANDSCAPE MAINTENANCE

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF PHOENIX

115269

THIS AGREEMENT is entered into 20th April, 2005, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PHOENIX, ARIZONA, acting by and through its CITY MANAGER (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes, § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State

2. In addition to the statutes listed above, the City is empowered by Chapter II, Section 2. (i) of the City Charter and by Arizona Revised Statutes § 9-276 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State and the City are in mutual agreement to landscape the areas outside of the sound wall of State Route 51 (SR 51) at Campbell Avenue and Oak Street pedestrian bridges, hereinafter referred to as the "Project". The State will provide a one time lump sum monetary contribution to the Project in an amount of \$23,170.00. The responsibility of each of the parties is defined in this Agreement under Section II. Scope of Work

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 27473  
Filed with the Secretary of State  
Date Filed: 04/20/05

Janice K. Brewer  
Secretary of State

By: Dennis D. Graesswald

**II. SCOPE OF WORK**

## 1. The City shall:

a. Upon execution of this Agreement, invoice the State \$23,170.00 for its one time lump sum monetary contribution to the Project.

b. Engage the services of a licensed contractor consistent with Arizona Revised Statutes Sections 34-101 and following. Administer same and make all payments to the contractor(s). Be responsible for contractor claims for extra compensation, due to delays or whatever reason attributable to the City.

c. Furnish and install necessary potable water services. Authorize and pay or waive any water development fees. Furnish all potable water for the landscaping during installation, construction phase, and all water thereafter necessary to properly maintain the landscape areas, all at City's expense. The City's obligation to furnish potable water for the Project may be consistent with any water conservation or drought management actions or plans taken by or adopted by the City.

d. Assume responsibility for maintenance of the Project, including all testing, adjusting, repairing and operation of the irrigation system, furnish and pay for irrigation system electrical power necessary to operate the irrigation controllers, keep all areas free of weeds, undesirable grasses and litter, apply irrigation water consistent with paragraph 1(c) above, furnish and apply insecticide/herbicide sprays and dust to combat diseases and other pests, prune and replant as required to maintain the landscaping.

## 2. The State shall:

a. Upon execution of this Agreement, remit to the City \$23,170.00 for its one time lump sum monetary contribution to the Project.

b. Be responsible for contractor claims of extra compensation due to delays or whatever reason attributable to the State.

**III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements; provided herein. However, any provisions for landscaping maintenance, electrical energy and water provided by the City shall be perpetual. This Agreement may be terminated by either party at any time upon sixty (60) days written notice to either party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said landscaping.

2. This Agreement shall become effective upon filing with the Secretary of State.

3. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

4. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement and both the City and the State shall be afforded the rights, interests and privileges as provided therein, provided however, that should the City make a reasonable request to inspect the records of the State relating to this Project, such records will be produced at a time and location convenient to both parties.

5. In the event of any controversy, which may arise out of this Agreement, the Parties hereby agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518 as applicable.

6 This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The provisions of Arizona Revised Statutes § 41-1463 and Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination"

7 Non-Availability of Funds. Every payment obligation of the State and the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this Agreement may be terminated by the State and/or the City at the end of the period for which the funds are available. No liability shall accrue to the State and/or the City in the event this provision is exercised, and the State and/or the City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8 All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue Mail Drop 616E  
Phoenix, AZ 85007  
FAX: (602) 712 7424

City of Phoenix  
Street Transportation Department  
c/o Briana Leon, P.E. / Ray Dovalina, P.E.  
200 W. Washington Street 5<sup>th</sup> Floor  
Phoenix, AZ 85003-1611


9 Pursuant to Arizona revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

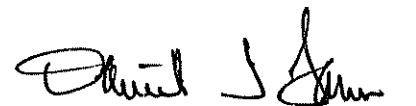
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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

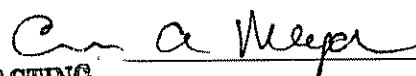
CITY OF PHOENIX, an Arizona Municipal  
Corporation, Frank Fairbanks, City Manager

STATE OF ARIZONA  
Department of Transportation

By   
ROSS D. BLAKELY, JR., P.E.  
Acting Street Transportation Director

By   
DANIEL S. LANCE, P.E.  
Deputy State Engineer

ATTEST

By   
**ACTING**  
City Clerk



G:04-102-Land Maintenance  
REV 5-1Feb2005-IH

RESOLUTION NO. 20201

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA THROUGH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR LANDSCAPE ENHANCEMENTS FOR THE OAK STREET AND CAMPBELL AVENUE PEDESTRIAN BRIDGES OVER STATE ROUTE 51.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. The City Manager is authorized to enter into an intergovernmental agreement with the State of Arizona through the Arizona Department of Transportation for landscape enhancements for the Oak Street and Campbell Avenue pedestrian bridges over State Route 51.

PASSED by the Council of the City of Phoenix this 16th day of February, 2005.

  
MAYOR

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

 ACTING  
City Attorney

REVIEWED BY:

  
City Manager

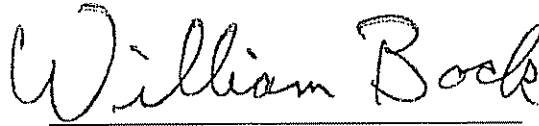
DLB:tml/CM 51/2-16-05/176141v1


OFFICE OF THE CITY CLERK  
CITY OF PHOENIX  
2005 FEB 16 10:12 AM  
RECEIVED

APPROVAL OF THE CITY OF PHOENIX ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF PHOENIX, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

A handwritten signature in black ink that reads "William Book". The signature is written in a cursive style with a horizontal line underneath the name.

**ACTING**  
 **City Attorney**



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

**INTERAGENCY SERVICE AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR05-0127TRN (**JPA 04-102**), an Agreement between public agencies, i.e., The State of Arizona and The City of Phoenix, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: April 13, 2005

TERRY GODDARD  
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis", written over a horizontal line.

Susan E. Davis  
Assistant Attorney General  
Transportation Section

SED:mjf  
Attachment  
900535